

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF PUERTO RICO**

IN THE MATTER OF:

PLAYA HERMOSA DEVELOPMENT CORP.

DEBTOR.

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CASE NO. 14-09236 (ESL)

CHAPTER 11

**UNITED STATES TRUSTEE'S MOTION TO DISMISS
PURSUANT TO 11 U.S.C. § 1112(b)(1), (b)(4)(H) and (b)(4)(F)**

TO THE HONORABLE COURT:

Guy G. Gebhardt, the Acting United States Trustee for Region 21 (the "United States Trustee"), pursuant to 28 U.S.C. § 586(a) and § 307 of the Bankruptcy Code, respectfully states and prays as follows:

1. The Debtor filed a voluntary petition under Chapter 11 of the Bankruptcy Code on November 6, 2014 (Dkt. #1).

2. Since the filing date, the Debtor has been managing its financial affairs as a debtor in possession.

Cause for Dismissal Pursuant to 11 U.S.C. §1112(b)(1) and (b)(4)(H)

3. Section 1112 (b)(1) and (4)(H) of the Bankruptcy Code, provides as follows:

§1112. Conversion or dismissal

.....

(b)(1) Except as provided in paragraph (2) of this subsection, subsection (c) of this section, and section 1104(a)(3), on request of a party in interest, and after notice and hearing, absent unusual circumstances specifically identified by the court that establish that the requested conversion or dismissal is not in the best interest of creditors and the estate, the court shall convert a case under this chapter to a case under

UNITED STATES TRUSTEE'S MOTION TO DISMISS
PURSUANT TO 11 U.S.C. § 1112(b)(1), (b)(4)(H) and (b)(4)(F)

Case no. 14-09236 (ESL) Playa Hermosa Development Corp.

Page 2

chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, in the movant establishes cause.

.....
(b)(4) For purposes of this section, the term "cause" includes –

.....
(H) failure timely to provide information or attend meetings reasonably requested by the United States trustee (or the bankruptcy administrator, if any);
.....

11 U.S.C. §1112(b)(1) and (b)(4)(H).

4. On November 19, 2014, the United States Trustee sent to Debtor's counsel, Diomedes Lajara Radinson, Esq., a letter scheduling the Initial Debtor Interview (the "IDI") for December 5, 2014, at 10:30 a.m., and requiring that certain documents be provided before the IDI (by December 1, 2014). The letter was sent via e-mail. (See **Exhibit "A"** attached hereto).

5. The Section 341 meeting of creditors in the case of caption was set for December 15, 2014 (docket # 3).

6. As of the end of business on December 1, 2014, the United States Trustee had not received any of the documents required by the United States Trustee Guidelines. As of the date of this motion, the United States Trustee has not received any of the documents required by the United States Trustee Guidelines.

7. On December 5, 2014, neither Debtor nor counsel appeared for the IDI.

8. Therefore, the United States Trustee respectfully submits that cause for dismissal has been established under Section 1112(b)(4)(H), and hereby moves the Court for the dismissal of the captioned proceedings.

Cause for Dismissal Pursuant to 11 U.S.C. § 1112(b)(1) and (b)(4)(F)
(Unexcused Failure to Satisfy Timely any Filing or Reporting Requirement
Established by this Title or by Any Rule Applicable to a Case under This Chapter)

9. Section 1112 (b)(4)(F) of the Bankruptcy Code, provides as follows:

§1112. Conversion or dismissal

.....

(b)(4) For purposes of this section, the term "cause" includes-

.....

(F) unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter;

.....

11 U.S.C. §1112(b)(4)(F).

10. Federal Rule of Bankruptcy Procedure 1007(b) and (c) requires a debtor to file with the petition, or within 14 days thereafter, the schedules and the statement of financial affairs. Debtor's schedules and statement of financial affairs were not filed with the petition, nor were filed within 14 days of the filing of the petition. The fourteen-day period expired on November 20, 2014.

11. On December 5, 2014, 29 days after the filing of the petition, Debtor moved the court for an extension of time until December 15, 2014, to file the schedules and the statement of financial affairs (DN 15).

12. On December 5, 2014, creditor Oriental Bank filed a *Motion to Dismiss under U.S.C. 1112(b) and Opposition to Debtor's Request for Extension of Time Filed at Docket 15* (DN 17).

13. On December 8, 2014, this Court entered an order scheduling Oriental Bank's motion to dismiss for a hearing on January 20, 2015 (DN 19).

14. On December 8, 2014, this Court entered an order denying Debtor's request for extension of time to file the schedules and the statement of financial affairs (DN 20).

15. The meeting of creditors scheduled for December 15, 2014, could not be held.

UNITED STATES TRUSTEE'S MOTION TO DISMISS
PURSUANT TO 11 U.S.C. § 1112(b)(1), (b)(4)(H) and (b)(4)(F)
Case no. 14-09236 (ESL) Playa Hermosa Development Corp.

Page 4

16. The United States Trustee hereby joins in the motion to dismiss filed by Oriental Bank under 11 U.S.C. Sec 1112(b)(4)(F).

17. Therefore, the United States Trustee respectfully submits that cause for dismissal has been established under Section 1112(b)(4)(F), and hereby moves the court for the dismissal of the captioned proceedings.

18. The United States Trustee hereby waives the Sec 1112 (b)(3) determination period and requests that the hearing on this motion to dismiss be scheduled also for January 20, 2015.

WHEREFORE, the United States Trustee respectfully requests that the Court dismiss the instant case pursuant to 11 U.S.C. Sec. 1112(b)(1), (b)(4)(H) and (b)(4)(F).

NOTICE

Within fourteen (14) days after service as evidenced by the certification, and an additional three (3) days pursuant to Fed. R. Bank. P. 9006(f) if you were served by mail, any party against whom this paper has been served, or any other party to the action who objects to the relief sought herein, shall serve and file an objection or other appropriate response to this paper with the Clerk's office of the U.S. Bankruptcy Court for the District of Puerto Rico. If no objection or other response is filed within the time allowed herein, the paper will be deemed unopposed and may be granted unless: (i) the requested relief is forbidden by law; (ii) the requested relief is against public policy; or (iii) in the opinion of the Court, the interest of justice requires otherwise.

-CERTIFICATE OF SERVICE-

I DO HEREBY CERTIFY that on this day I electronically filed a true and exact copy of the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

UNITED STATES TRUSTEE'S MOTION TO DISMISS
PURSUANT TO 11 U.S.C. § 1112(b)(1), (b)(4)(H) and (b)(4)(F)
Case no. 14-09236 (ESL) Playa Hermosa Development Corp.

Page 5

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imaceira@delgadofernandez.com

I DO HEREBY FURTHER CERTIFY that on this same date a true and exact copy of

the foregoing has been sent by regular United States mail to Debtor:

PLAYA HERMOSA DEVELOPMENT CORP.
AVE. JESUS T. PINERO 293
SAN JUAN PR 00927

DATED: December 17, 2014

GUY G. GEBHARDT
Acting United States Trustee for Region 21

MONSITA LECAROS ARRIBAS
Assistant United States Trustee

OFFICE OF THE UNITED STATES TRUSTEE
Edificio Ochoa
500 Tanca Street, Suite 301
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[Electronically Filed]

By: /s/Nancy Pujals
Nancy Pujals
Trial Attorney
USDC-PR No. 201103



U.S. Department of Justice

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November 19, 2014

Diómedes Lajara Radinson, Esq.
Lajara Radinson & Alicea, P.S.C.
1303 Américo Miranda Avenue
San Juan, PR 00921-2109

Re: **PLAYA HERMOSA DEVELOPMENT CORP.**
CASE NUMBER 14-09236

Dear Mr. Lajara:

Title 28, §586 (a) (3) of the United States Code, directs the United States Trustee to supervise the administration of all Chapter 11 cases. To comply with this change, the United States Trustee for Region 21 has established certain operating guidelines and reporting requirements for Chapter 11 debtors in possession and trustees.

For your guidance and convenience, the initial Chapter 11 information package has been placed on our website at http://www.justice.gov/ust/r21/reg_info.htm. The package includes the following documents, many of which can be completed on the website before printing.

1. United States Trustee Operating Requirements and Reporting Requirements.
2. United States Trustee Financial Requirements Checklist, Certifications, and Declarations.
3. Debtor's Basic Monthly Operating Report (Small Business) with Instructions.
4. Debtor's Standard Monthly Operating Report (Business) with Instructions.
5. Debtor's Monthly Operating Reports (Individual) with Instructions.
6. Debtor's Monthly Operating Report (Post-Confirmation) with Instructions.
7. Frequently Asked Questions.

EXHIBIT A

Diómedes Lajara Radinson, Esq.
Bankruptcy Case No. 14-09236
November 19, 2014

Page 2

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8. List of United States Trustee Approved Depositories for bank accounts.
 9. Guidelines for Reviewing Applications for Compensation.
 10. Limited Waiver.
 11. Certification of Receipt and Understanding of Notice - Disclosure Under Debt Collection Improvement Act of 1996.
 12. List of U.S. Trustee Program Region 21 Field Offices.
 13. Standard Bank Reconciliation Form.
 14. Certificate of Receipt and Understanding of Notice - United States Payment Center Lockbox Destruction Policy and Banking System.
 15. Certification of Receipt and Understanding of Notice - Individual Chapter 11 Debtor IRS Filing and Reporting Requirements under Section 1115 of the Bankruptcy Code.
 16. Certification of Receipt and Understanding of Notice - Chapter 11 Debtor-in-Possession/Trustee Requirement to Obtain a Prompt Determination of Unpaid Tax Liability.

The following individuals from the Office of the United States Trustee are assigned to your case:

Nancy Pujals, Trial Attorney
Emilio A. Miranda Ramírez, Bankruptcy Analyst

If you are an attorney, do not hesitate to contact this office should you have questions. Debtors, if represented, should contact their attorney with questions about this material.

Additionally, as part of the Chapter 11 proceedings, it is the practice of the United States Trustee to schedule an Initial Debtor Interview within fifteen (15) days of the filing of the petition or conversion of a case. The purpose of this conference is to provide guidance and instructions pertaining to the debtor's responsibilities as a Debtor-In-Possession (DIP). It will be necessary for you and your client to review the initial chapter 11 package documents and/or complete the required certifications, affidavits, or declarations prior to attending the initial debtor conference.

The United States Trustee requires the debtor to provide the financial and business information on the attached list, or in the alternative, provide us with a detailed explanation as to

Diómedes Lajara Radinson, Esq.
Bankruptcy Case No. 14-09236
November 19, 2014

Page 3

why such information is not available, prior to the Initial Debtor Interview. It is imperative that 1) this information be provided before the scheduled interview and 2) the debtor and the debtor's attorney, if represented, attend the interview. Failure to do so may result in a motion to dismiss or convert, or for the appointment of a trustee.

The interview will last approximately one hour, and is scheduled for **DECEMBER 5, 2014, at 10:30 AM**, at our offices. Due to the volume of cases handled by our office and current coordination of similar interviews and hearings, any request for continuance of said date should be avoided, but if inevitable, duly justified in writing and with proper evidence. Please ensure the requested information on the attached list is delivered to us no later than **DECEMBER 1, 2014**. If the debtor is an individual, please bring identification and proof of their social security number to the initial debtor interview.

Thank you for your attention to this matter and if you have any questions, please do not hesitate to call me.

Sincerely,

Assistant United States Trustee

cc: Nancy Pujals, Trial Attorney
Emilio A. Miranda-Ramírez, Bankruptcy Analyst

CHAPTER 11 FINANCIAL & BUSINESS INFORMATION

The information to be provided to the United States Trustee for the Initial Debtor Interview includes the following documents. Please submit your completed package in the following order:

1. Receipt and Certification of Understanding of Operating Guidelines and Reporting Requirements (Attachment A).
2. Completed "Information for Initial Debtor Interview" (Attachment B) and completed schedules.
3. Completed "Declaration of Pre-Petition Account Closings and Opening of Debtor in Possession Bank Accounts" (Attachment C).
4. Certification of Receipt and Understanding of Notice - Disclosure under Debt Collection Improvements Act of 1996 (Attachment D).
5. Limited Waiver (signed by attorney).
6. Copies of Puerto Rico income tax returns (and federal tax returns, if they have been filed), including all schedules and all W-2, 1099, and K-1 forms, for the two most recent taxable periods prior to the date of the bankruptcy petition. If either of the returns has not been filed, provide copies of the two most recently filed Puerto Rico income tax returns (and federal tax returns, if they have been filed). (If joint case and debtors filed separate returns, provide both returns.).
7. Copies of Personal Property Tax returns for the two (2) years prior to filing with all schedules and attachments.
8. Copies of most recent audited and unaudited Financial Statements.
9. Balance Sheet as of Month-end immediately preceding filing.
10. Profit and Loss Statement for Month immediately preceding filing.
11. Proof of Insurance Coverage - General Liability, Property, Fire and Theft, Workers' Compensation, Vehicle, other insurance normally required in this business.
12. Projected cash budget for first six (6) months of post petition operations.
13. Detailed listing of Accounts Receivable and an Accounts Receivable aging report.
14. List of all checks written and other disbursements on all accounts 90 days prior to filing petition include check number, date, payee, amount and purpose.

15. Report of Physical Inventory.
16. Current rent roll, if debtor has tenant-occupied property.
17. Copies of current business licenses and performance bonds, if required.
18. Details on Pension, Welfare Health Plans, (i.e., type of plans maintained, fully or self-insured, administrators, who makes contributions, who maintains assets of the plans, etc.).
19. For each principal, submit a resume, current job description and responsibilities, disclosure of compensation/benefit package for the 12 months prior to bankruptcy and the anticipated compensation/benefit package during the pendency of the Chapter 11 case.
20. For Small Business Debtors a copy of Business Plan.
21. Certification of Receipt and Understanding of Notice - Individual Chapter 11 Debtor IRS Filing and Reporting Requirements under Section 1115 of the Bankruptcy Code.
22. Certification of Receipt and Understanding of Notice - Chapter 11 Debtor-in-Possession/Trustee Requirement to Obtain a Prompt Determination of Unpaid Tax Liability.